



## **FEDERAL MEDIATION AND CONCILIATION SERVICE**

### **Privacy Act of 1974; System of Records**

**AGENCY:** Federal Mediation and Conciliation Service

**ACTION:** Notice of a new system of records.

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**SUMMARY:** To fulfill its conflict resolution, training, and outreach mission, Federal Mediation and Conciliation Service (FMCS) uses surveys to provide training and education, conduct interactive exercises, and create consensus during mediation and training meetings. For engagements with FMCS clients in meetings of all types, FMCS uses a collection of online engagement activity tools that includes Survey Monkey, Poll Everywhere, Microsoft Forms, and FacilitatePro, all of which are online licensed software platforms, for customers' meeting effectiveness, electronic flip charting, project management, requests for assistance, event registration, needs assessments, and surveys. FMCS will use surveys from clients to evaluate services and employee performance.

**DATES:** This system of records will be effective without further notice on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** unless otherwise revised pursuant to comments received. New routine uses will be effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may send comments, identified by FMCS-0002, by any of the following methods:

- Mail: Office of General Counsel, 250 E Street, SW, Washington, DC 20427.
- E-mail: [ogc@fmcs.gov](mailto:ogc@fmcs.gov). Include FMCS-0002 on the subject line of the message.
- Fax: (202) 606-5444.

**FOR FURTHER INFORMATION CONTACT:** Anna Davis, Acting General Counsel, at 202-606-3737 or [adavis@fmcs.gov](mailto:adavis@fmcs.gov).

**SUPPLEMENTARY INFORMATION:** This describes a new system for FMCS and its customers for meeting effectiveness, electronic flip charting, project management, requests for assistance, event registration, and surveys.

Dated: May 25, 2022.

**Anna Davis,**

*Acting General Counsel.*

**SYSTEM NAME AND NUMBER:** FMCS-0002 Survey Records.

**SECURITY CLASSIFICATION:** Unclassified.

**SYSTEM LOCATION:** Federal Mediation and Conciliation Service, 250 E Street, SW, Washington, DC 20427.

**SYSTEM MANAGER(S):** Doug Jones, Director of Information Technology, email [djones@fmcs.gov](mailto:djones@fmcs.gov), or send mail to Federal Mediation and Conciliation Service, 250 E Street, SW, Washington, DC 20427, Attn: Doug Jones.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** Federal Mediation and Conciliation Service, 29 U.S.C. 172, et seq.; The National Labor Relations Act, 29 U.S.C. 151, et seq.; Administrative Dispute Resolution Act, 5 U.S.C. 571-584; Negotiated Rulemaking Act of 1990, 5 U.S.C. 561-570; the Federal Labor Relations Act, 5 U.S.C. 7119; and Departmental Regulations, 5 U.S.C. § 301.

**PURPOSE(S) OF THE SYSTEM:** This system is maintained for the purposes of assessing parties' needs, engaging parties to a dispute in finding resolution, collecting and handling data for use in negotiations and mediations, engaging parties in virtual meetings,

teaching problem-solving skills, and creating and receiving evaluations from parties on the quality of services they receive from FMCS by collecting information used during live training sessions for educational purposes.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** The system encompasses all individuals participating in training and evaluation sessions, both virtually and in-person, with an FMCS Mediator, the FMCS staff referenced in the evaluations, and FMCS staff processing the evaluations. Also, this includes parties to mediation.

**CATEGORIES OF RECORDS IN THE SYSTEM:** The system consists of records created or compiled during live training sessions and for purposes of evaluating FMCS's services. The system also includes FMCS employee and client responses to questions, surveys, and scenarios. These records include contact information for participants, and participant responses. System access records are also included (login information for users and FMCS staff). Specifically, these engagement programs might collect information names, participant responses to open-ended questions, contributions to a brainstorming activity in training or mediation, ideas that represent possible dispute resolution options, and other data. In short, the data that arrives through these engagement tools is the same or similar information that would be available to an FMCS mediator in any in-person meeting with clients and is handled with the same degree of confidentiality as a mediator would handle paper or traditional written data-gathering methods.

**RECORD SOURCE CATEGORIES:** Information in this system of records is provided by FMCS clients or training registrants, conference attendees, and FMCS staff assigned to help process the survey results.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:** In addition to those

disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FMCS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

- a) To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule regulation or order where the record, either alone or in conjunction with other information creates an indication of a violation or potential violation of civil or criminal laws or regulations.
- b) To the Government Accountability Office (GAO) for oversight purposes; to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.
- c) To disclose information to the National Archives and Records Administration (NARA) or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.
- d) To a former employee of the Agency for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Agency regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Agency requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.
- e) To disclose information to contractors, grantees, experts, consultants, detailees, and other non-Government employees performing or working on a contract,

service, or other assignment for the Federal Government when necessary to accompany an agency function related to this system of records.

- f) To officials of labor organizations recognized under 5 U.S.C. Chapter 71 upon receipt of a formal request and in accordance with the conditions of 5 U.S.C. 7114 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.
- g) To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of, and at the request of, an individual who is the subject of the record.
- h) To the Department of Justice, including Offices of the U.S. Attorneys; another Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body; another party in litigation before a court, adjudicative, or administrative body; or to a court, adjudicative, or administrative body. Such disclosure is permitted only when it is relevant and necessary to the litigation or proceeding, and one of the following is a party to the litigation or has an interest in such litigation:
  - 1) FMCS, or any component thereof;
  - 2) Any employee or former employee of FMCS in their official capacity;
  - 3) Any employee or former employee of FMCS in their capacity where the Department of Justice or FMCS has agreed to represent the employee;
  - 4) The United States, a Federal agency, or another party in litigation before a court, adjudicative, or administrative body, upon the FMCS General Counsel's approval, pursuant to 5 CFR part 295 or otherwise.
- i) To any federal agency, organization, or person for the purposes of performing audit or oversight operations related to the operation of this system of records as

authorized by law, but only information necessary and relevant to such audit or oversight function.

- j) To disclose to FMCS clients who participate in trainings and presentations to collect survey results and information during educational sessions to facilitate group discussions and learning.
- k) To disclose to FMCS clients to facilitate mediation.
- l) To disclose to another Federal agency or Federal entity, when FMCS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.
- m) To appropriate agencies, entities, and persons when (1) FMCS suspects or has confirmed that there has been a breach of the system of records, (2) FMCS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, FMCS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FMCS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.
- n) To disclose aggregate data from the surveys in support of research activities conducted by FMCS employees, other agencies, and educational institutions who collaborate with FMCS.

- o) To distribute and present aggregate data received from the surveys for news, public relations, official agency social media, community affairs, and client services purposes.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:** After the project is completed, data collected for the project is transferred to a Microsoft document or spreadsheet and sent to the project manager for determination of sharing, temporary storage, or destruction. Data collected is accessed through agency internal drives which require a username and password. Upon FMCS client request, these documents may be created in hard copy and provided to the client then destroyed when FMCS closes the case or ends the training or service.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:** Records are retrieved by the name or other programmatic identifier, including the date of the training or FMCS service.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF**

**RECORDS:** Temporarily stored data or records received by the project manager is deleted by the end of the fiscal year unless there is a specific need to retain it longer. Records are retained and disposed of in accordance with General Records Schedule 4.2, issued by the National Archives and Records Administration.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:** FMCS maintains the FacilitatePro data and user profiles on its own servers and have an electronic backup system in place in the event of a system failure, as well as an alternative system consistent with requirements of Continuing of Operations Plan. The system requires a username and password which can only be created by FMCS. FMCS employee access to these systems is on a limited license basis and requires use of internal agency network and drives. Access is restricted, and accessible to limited FMCS Personnel such as the Project Manager, System Administrator, IT, and/or individuals in a

need-to-know capacity. The other platforms mentioned above are web-based programs and require either FMCS Office 365 credentials, usernames and passwords, or both, in order to be used by an employee of FMCS.

**RECORD ACCESS PROCEDURES:** FMCS employees, both current and former, may request access to their own records used as the basis for their performance evaluations through the Office of Human Resources. For external users, Privacy Act requests may be completed pursuant to 29 CFR 1410.3, Individual access requests. Individuals must provide the following information for their records to be located and identified: (1) Full name, (2) Address, and (3) A specific description of the record content requested. Also, see <https://www.fmcs.gov/privacy-policy/>.

**CONTESTING RECORDS PROCEDURES:** See 29 CFR 1410.6, Requests for correction or amendment of records, on how to contest the content of any records.

Privacy Act requests to amend or correct records may be submitted to the Privacy Office at [privacy@fmcs.gov](mailto:privacy@fmcs.gov) or via mail at Federal Mediation and Conciliation Service, 250 E Street, SW, Washington, DC 20427. Also, see <https://www.fmcs.gov/privacy-policy/>.

**NOTIFICATION PROCEDURES:** See 29 CFR 1410.3(a), Individual access requests.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:** None.

**HISTORY:** None.

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